THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Arbitration Application No. 08 of 2007 (S/J)
(Under Section 11(6) of the Arbitration and Conciliation Act, 1996)

M/s Veer Singh & Company through Veer Singh S/O Sri Naubat Singh, Resident of Mohalla Fatehullah Ganj, Thakurdwara, District Moradabad (U.P.)

….. Applicant.

Versus

1. Superintending Engineer, Irrigation Work Circle, Nainital.
2. Executive Engineer, Kosi Construction Division Ramnagar TRICT Nainital.
3. State of U.P. through District Magistrate, Moradabad.

…..Respondents

Sri K.S.Bhaskar, learned counsel for the applicant.

Dated July 19, 2007.
Hon'ble B.S.Verma, J.

The applicant M/s Veer Singh and Company has filed the application under Section 11(6) of the Arbitration and Conciliation Act, 1996 ***(for short the Act)*** for a direction commanding the respondent no.1 to appoint an Arbitrator for adjudication of the dispute as per arbitration clause under the contract bond.

According to the applicant, the applicant is a partnership firm in the name and style M/s Veer Singh & Company Thakurdwara, Mohalla Fatehullahganj, District Moradabad. The applicant submitted a tender for extension of Belgarh Canal, which was accepted by the respondent no.2 vide his letter dated 26-4-1983 and consequently, an agreement of contract No. 4/EE/1983-84 was executed between the parties. The applicant Company deposited 3% earnest money. The contractor was required to complete the work within a period of three months from 3-5-1983. The petitioner company started executing the work. During the course of execution of contract work, the forest department raised objection that the land where the alignment of canal was marked had not been transferred to the Canal Department. The applicant

Company informed the respondent no.2 in writing, but the respondent no.2 did not pay any heed to the letter sent by the applicant and did not remove the hurdle. It was stated that on the direction of the Executive Engineer of the respondents, the applicant company undertook the work. It is alleged that the applicant sustained loss of Rs. 5-6 thousands due to flood in the river. The applicant was directed to stop the work by respondent no.2 through his letter dated 4-8-1983, a copy of which has been annexed as Annexure IV. The applicant then wrote a letter to Assistant Engineer III, Kosi Construction Division Ramnagar intimating the fact of stoppage of work under the direction of the respondent no.2 and also regarding the loss suffered by him vide Annexure No. V. it is alleged that the Assistant Engineer by his letter dated 28-12-1985 again asked the applicant whether he is ready and willing to restart the work on the same terms and conditions etc. According to the applicant no measurement of work executed by the applicant was ever taken at the time when he was directed to stop the work. It was only in the year 1986 that the respondent no.2 directed the applicant to get the measurement of work done on 20-1-1986, which was not feasible to record measurement of work done after a lapse of about three years Even then when the applicant reached the spot, none came to get the measurement of work done from the side of the respondent. It was only on 13-04-1987 that the respondent no.2 wrote a letter to the applicant to deposit the amount of Rs. 93,931.12, which was not acceptable to the applicant, hence, the applicant has come up before this Court.

I have heard learned counsel for the applicant and perused the record including the supplementary affidavit.

Admittedly, as mentioned by the applicant in paragraph no. 15 of the writ petition that the respondent no. 2 wrot a letter to the deponent on 13-4-1987 directing the deponent to

deposit the amount of Rs. 93,931.12, which was not accepted to deponent, therefore, the applicant has filed this application.

It is thus evident from the averments made by the applicant that the applicant has never tried to invoke the arbitration clause, rather when the Department asked the applicant to deposit the aforesaid amount, the applicant has prayed for appointment of arbitrator. It is significant to mention that the applicant never requested the respondent to resolve the dispute between the parties by appointing arbitrator.

The applicant has filed the copy of the contract bond along with supplementary affidavit, but surprisingly the applicant has not made any application to respondents to invoke arbitration clause until the applicant had apprehended recovery of amount from him. According to the petitioner, there is arbitration clause in the contract bond. What has prevented the applicant from requesting the respondents to appoint an arbitrator till he was directed to deposit the amount of Rs. 93,931.12 by the respondents is best known to the applicant. It is not a case in which the prayer of the applicant was refused for appointment of arbitrator. In such circumstances I find that the matter is not referable to the arbitrator. The application is liable to be dismissed.

The application under Section 11(6) of the Arbitration and Conciliation Act, 1996 is dismissed. However, the petitioner would be at liberty to file a Civil Suit against the respondents for redressal of his grievance, if any, against the respondents.

(B.S.Verma, J.)

RCP